

REMARKS

Claims 30 and 31 have been added. Claims 1 through 31 remain pending in the present application. None of the claims have been amended.

REJECTION UNDER 35 U.S.C. § 103

The Examiner has rejected Claims 1, 6 through 12, 17 through 23, 25 and 27 under 35 U.S.C. §103(a) alleging them to be unpatentable over Rosa et al in view of Tanaka et al. The Examiner alleges that these references disclose Applicants' invention.

Independent Claim 1 claims, among other elements, a rotating member in a housing seeking an equilibrium position which corresponds to a level position; at least one member for enabling passage of a beam through the rotating member; an electrical circuit including an emitting device, a receiving device and an indicator device. The emitter device emits a beam which passes through the at least one member where the beam is received by the receiving device which, in turn, activates the indicator device indicating to the user that the level device is in or near an equilibrium position.

The art relied on by the Examiner fails to disclose or suggest Applicants' invention. The Rosa et al reference illustrates an orientation circuit which includes a housing filled with a non-conductive oil and a pair of electrical contacts in the shape of a circular ring and a T. When the legs of the T contact the ball, which in turn contacts the circular contact, the ball acts to transmit current between the two contacts. The Examiner alleges that this could be combined with the Tanaka et al reference. The Tanaka et al reference illustrates an inclinometer which includes a sector weight pivotally supported on a main body. The inclinometer is mounted in a vehicle to determine the inclination of the vehicle. The device includes several elongated openings which enable light to pass through.

The Rosa et al and Tanaka et al combinations fail to disclose or suggest Applicants' invention. There is no logical nexus as to why one would utilize the Tanaka et al inclinometer inside of the oil filled housing of Rosa et al. Rosa et al includes a hard wired system which would not be modified by the Tanaka et al reference. Further, Tanaka et al includes elongated slots which continue to enable light to pass through the sector well after the sector has hit its

vertical position. Thus, the Tanaka et al reference would not render Applicants' invention obvious.

Further, only through hindsight reconstruction can the Examiner allege that this combination would render Applicants' invention obvious. There is no motivation or suggestion to combine these two references as suggested by the Examiner. Only by using the Applicants' invention as a template can the Examiner conclude that these two references could be combined. This hindsight reconstruction is impermissible under §103.

Accordingly, Applicants believe that the Examiner's combination is unsupported since there is no logical way to combine the two references as suggested by the Examiner. Accordingly, Applicants believe all claims to be in condition for allowance.

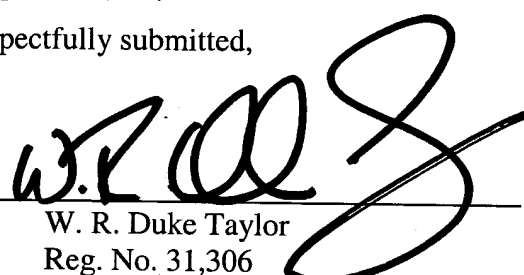
New Claims 30 and 31 have been added. These claims are independent claims with the limitations of Claims 2 and 13, which were indicated as allowable, and are believed to be allowable.

Accordingly, Applicants respectfully request the Examiner to pass the case to issue at his earliest possible convenience. Should the Examiner have any questions regarding the present application, he should not hesitate to contact the undersigned at (248) 641-1600.

Respectfully submitted,

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By


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